IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 27985 of 2006(F)

PETITIONER:

M.ABDUL RAHIMAN, 'MAIMOONS',
NEAR MASTER'S COLLEGE, KOTTARAKKARA,
(RETIRED DEPUTY TAHSILDAR, PATHANAMTHITTA)
LAND REVENUE DEPARTMENT.

BY ADV. SRI.C.K.ABDUL RAHIM

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF REVENUE, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE COMMISSIONER OF LAND REVENUE, THIRUVANANTHAPURAM.**

3. **THE DISTRICT COLLECTOR, PATHANAMTHITTA.**

BY GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.27985/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT PUBLISHING THE SENIORITY LIST OF DEPUTY TAHSILDAR DT. 16.5.01.

EXT.P1(a):- COPY OF THE LIST WHEREIN THE NAME OF THE PETITIONER IS INCLUDED.

EXT.P2:- COPY OF THE ORDER DT. 6.3.03 ISSUED BY THE 3RD RESPONDENT

EXT.P3:- COPY OF THE JUDGMENT DT. 27.9.05 IN WPC. 277/05.

EXT.P4:- COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DT. 19,.12.05.

EXT.P5:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DT. 2.2.06.

EXT.P6:- COPY OF THE ORDER DT. 31.3.06. LRT7.48676/05.

/TRUE COPY/

P.A. TO JUDGE

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V.GIRI,J.

W.P.(C) No. 27985 of 2006

Dated this the 24th day of September, 2007

JUDGMENT

The petitioner, a retired Deputy Tahsildar entered service of the first respondent on 7.1.1971 as a Lower Division Clerk. Thereafter he qualified in various departmental tests for getting promotion to the post of Upper Division Clerk, to which post he was promoted on 22.11.1982. The petitioner entered on leave without allowances from 7.2.1986 to 5.12.1994. The seniority list of Upper Division Clerk was published on 25.10.1995. Petitioner's name did not find a place therein. Petitioner, had rejoined duty after leave without allowance with effect from 5.12.1994, he contends.

2. Thereafter the petitioner was promoted to the post of Head Clerk with effect from 16.7.1996 by assigning him rank No.2740(a). According to him, he should have been assigned date of promotion on 6.11.1995. He contends that he had challenged promotion to the post of Head Clerk seeking an earlier date by means of a representation before the Head of the Department. It was not rectified, according to the petitioner.

3.The seniority list of Head Clerk/Revenue Inspector was published on 12.12.2000 and the petitioner was given promotion with effect from 16.7.1996. Thereafter the petitioner was promoted to the post of Deputy Tahsildar on 11.11.1999. According to him, he must have been promoted to

the post of Deputy Tahsildar from 15.5.1996.

4. While continuing as a Deputy Tahsildar, the petitioner retired on 30.4.2000. He then approached the Commissioner of Land Revenue for re-fixation of pay and consequential benefits, on the basis that he was entitled to be promoted as a Head Clerk and Deputy Tahsildar. Pursuant to Ext.P3 judgment, the issue was considered by the Land Revenue Commissioner who found that the petitioner was entitled to be included in the list of U.D.Clerk as on 10.9.1984 with rank No.2004. Ultimately taking note of seniority in the cadre of Lower Division Clerk, it was found that he was entitled to be promoted as a Head Clerk with effect from 1.12.1995 and the Deputy Tahsildar with effect from 15.5.1996. Accordingly, the petitioner was directed to be included as sl.No.782A in the list of Deputy Tahsildar's as on 16.8.2001.

5. Subsequently, the petitioner filed Ext.P5 before the Land Revenue Commissioner claiming back wages and other benefits consequent upon the re-fixation of seniority in the post of Head Clerk and Deputy Tahsildar in the manner,as aforementioned. This was rejected under Ext.P6 and hence the writ petition.

6. The respondents have filed a counter affidavit inter alia contending that the seniority list of Head Clerks and Deputy Tahsildar's in the Revenue Department actually came to be finalised belatedly on account of interference by this Court on several occasions. Petitioner's claim was ultimately accepted in Ext.P4. But as a matter of fact the petitioner started rendering services as a Head Clerk only with effect from 16.7.1996 and as a Deputy Tahsildar only with effect from 11.11.1999.

7. Reference is also made in the counter affidavit to Rule 23(a) of Part I of KS&SSR which says that a person will be entitled to draw charges as per the scale applicable to the post only from the date on which he actually works in that post.

8. I have heard the learned counsel for the petitioner Mr.C.K.Abdul Rehim and Mr.Nandakumar, Senior Government Pleader on behalf of the respondents.

9. Ext.P4 provides that the petitioner shall be treated as eligible for promotion to the post of Head Clerk with effect from 1.12.1995 and as a Deputy Tahsildar from 15.5.1996. As a matter of fact he started working as Head Clerk only with effect from 11.11.1999. This is not due to any fault of the petitioner. Mr.Rehim contends that ever since the publication of the seniority list of Upper Division Clerk in 1995, the petitioner had agitated his claim, but it came to be accepted only after retirement, vide Ext.P4 order. According to the petitioner, he has, therefore, been deprived of earning the wages applicable to the post of Head Clerk and Deputy Tahsildar, for the period from 1.12.1995 to 15.5.1996 in the case of Head Clerk and from 15.5.1996 to 11.11.1999 in the case of Deputy Tahsildar.

10. A Division Bench of this Court in the decision reported in **State of Kerala V Bhaskara Pillai** (2003(1) KLT 60), inter alia held as follows:

> ***"In short the normal rule must be that where there is no fault on the part of the officer concerned, he must be paid the monetary benefits due to him consequent to the retrospective promotion. In appropriate cases, it could be denied to him for valid reasons. In the three categories of cases enumerated in Philomina, such benefits cannot be denied to***

> ***him. The dictum in Philomina cannot be held to be valid any more in view of the decisions of the Supreme Court referred above to the extent that it stipulates a rule of general application that no Government servant is entitled to be paid for work which he has not done. This conclusion appears to be inevitable in view of the subsequent declaration of law by the Supreme Court in the decisions referred to above".***

11. In a subsequent decision of the Supreme Court reported in **Soumini** v **State Bank of Travancore** (2004(1) KLT 1022), it was held as follows:

> ***"Taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fat that her non-promotion was legal and there has been no unlawful interference with her right to promotion or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before Court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to".***

The Principle seems to be that if entitlement to the promotion post, came to be recognised belatedly on account of the fact that there was a

genuine dispute regarding the claim of the incumbent, then it may not be correct to award back wages or consequential benefits with reference to the date from which the incumbent is promoted on a subsequent occasion. But if the claim was clear and proper, and had been agitated by the incumbent at the earliest possible point of time, but grant of the same was resisted by the department without any justification and ultimately it came to be granted, but belatedly, then the delay in recognising the incumbent's claim for promotion to the particular post from an earlier date should not prejudice the incumbent by depriving him the actual fruits of such earlier promotion.

12. I am of the view that these matters have not been sufficiently considered in Ext.P6.

13. In the result, Ext.P6 is set aside and the second respondent is directed to reconsider the petitioner's claim for consequential benefits arising out of Ext.P4. The petitioner may be heard in this regard. The petitioner is also entitled to file an additional representation pointing out the principles laid down by this Court and the Supreme Court in the decision, as aforementioned. This process shall be completed within a period of 4 months from the date of receipt of a copy of this judgment.

V.GIRI, JUDGE

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